



FORT SAM HOUSTON LEGAL ASSISTANCE OFFICE **DURABLE POWER OF ATTORNEY**

A Power of Attorney (POA) is a document that authorizes someone to act on someone else's behalf. The person authorizing the other to act is the "principal" and the one authorized to act is the "agent." The principal designates the agent in the document, and the agent is authorized to act on the principal's behalf for whatever business the POA permits. A POA can be general, which allows the agent to conduct any business on behalf of the principal, or it may be specific, and limited to the transactions expressly provided for in the document. Third parties may treat the agent as if he or she is the principal in any transactions that the agent is authorized to conduct.

A regular POA is automatically suspended or revoked if you become disabled and are unable to speak for yourself. A Durable Power of Attorney (Durable POA) is a specific type of POA. It allows you to decide if you would like your POA to be effective immediately and continue if you become disabled, or you can decide that your POA will become effective only if you become disabled. A Durable POA will state: "This power of attorney shall not be affected by my disability," or "This power of attorney shall become effective upon my disability," or similar words. The Durable POA must be signed *before* you become disabled in order to be valid.

As with a regular POA, a Durable POA that is presently effective must be done cautiously. This is a powerful document that allows your agent to do anything that you could do. The person you appoint should be somebody you know and trust. Like a regular POA, a Durable POA can be broad or it can be limited. For example, you could appoint your agent to make all decisions on your behalf, beginning now and continuing through incapacitation. Or, you may provide that your agent only be allowed to sell your car, and only if you become disabled. If you wish to appoint someone to handle your medical affairs and make end-of-life decisions for you, you should consider a Health Care POA and an Advanced Medical Directive.

The person you appoint as an agent should be somebody with whom you are very familiar and confident in their abilities. This person should be knowledgeable about your morals, beliefs, and religious values. You can appoint anyone to be your agent, as long as they are competent, at least 18 years old, and not providing paid health care to you. It needs to be somebody who you trust to act in your best interest.

You may also choose to appoint more than one agent. In this case, you would have a "primary agent" and an "alternate agent." This is a good idea should your primary agent

become disabled and be unable to make decisions on your behalf. If this happens, your alternate agent can then act on your behalf. Again, both agents should be people you know and trust.

A Durable POA has several advantages. It allows you to choose somebody to make decisions on your behalf should you become disabled. Without a Durable POA, the court may appoint somebody to act on your behalf. This person may not be very familiar with you, and may not know exactly how you want to handle your affairs. With a Durable POA, you can be confident that you have appointed somebody who will act in your best interest.

A Durable POA is also beneficial if you and your spouse own all your property jointly. Although you have joint ownership, and your spouse will still be able to bank with your joint accounts, he or she will not be able to sell or modify any property that requires both signatures. Thus, you may want to consider a Durable POA for both you and your spouse, should either one of you become disabled.

A Durable POA does not have to be permanent. You have the right to revoke a Durable POA if you decide it is no longer in your best interest. To do so, you must be fully competent. You should indicate your revocation in writing, and deliver to all important parties, including your agent and anyone with whom the agent may conduct business. The Durable POA is also revoked automatically at the time of your death.